

EQUITABLE JURISDICTION TO PROTECT MEMBERSHIP IN A VOLUNTARY ASSOCIATION*

WHILE voluntary associations can settle most of their own problems privately, their internal affairs, like those of any organization, cannot be completely immune to judicial supervision. A member may be substantially injured by wrongful suspension or expulsion.¹ Not only does he lose the personal privileges of membership, but his reputation and prestige are bound to suffer from the attendant publicity.² And where the association is a professional society or labor union, his earning power may be seriously impaired. Only by an equitable order of reinstatement can the complex array of injuries to the wronged member's reputation and income be corrected.³

Yet courts are understandably reluctant to make their processes available to every individual who may be dissatisfied with the treatment he has received from his fellow members. Judicial intervention in an intramural dispute may arouse resentment, disrupting the internal harmony which is

* Berrien v. Pollitzer, 165 F. 2d 21 (D.C. Cir. 1947).

1. The test of wrongful expulsion which courts usually apply, once they have assumed jurisdiction, largely concerns the procedure used by the association. *E.g.*, Smith v. Kern County Medical Ass'n, 19 Cal.2d 263, 120 P.2d 874 (1942). See WRIGHTSON, UNINCORPORATED ASSOCIATIONS § 56 (2d ed. 1923); Comment, *Protection of Membership in Voluntary Associations*, 37 YALE L. J. 368 (1923). Expulsion is usually enjoined if the association has violated the procedural safeguards in its own by-laws. Willis v. Davis, 233 S.W. 1035 (Tex.Civ.App.1921); Coleman v. O'Leary, 58 N.Y.S.2d 812 (Sup.Ct.1945). Moreover, some courts read into the by-laws a provision requiring charges, notice and hearing. Ellis v. AFL, 48 Cal.App.2d 440, 120 P.2d 79 (1941); Strong v. Minnesota Auto Trade Ass'n, 151 Minn. 406, 186 N.W. 800 (1922). British courts take the view that the procedure must conform to the principles of "natural justice," which affords them a freer hand in reviewing the proceeding. Bunn v. National Amalgamated Laborers' Union, 2 Ch. 364 (1920); Parr v. Lancashire & Cheshire Miners' Federation, 1 Ch. 355 (1913); see Blek v. Wilson, 145 Misc. 373, 376, 259 N.Y.Supp. 443, 446 (Sup. Ct. 1932). Only in a few cases have the courts looked to the sufficiency of the evidence. *E.g.*, Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833 (1931), 80 U. OF PA. L. REV. 452 (1932). But some courts have invalidated an expulsion on a finding that the association tribunal acted in bad faith or exceeded its jurisdiction. Wilcox v. Royal Arcanum, 210 N.Y. 370, 104 N.E. 624 (1914); Bartlett v. Bartlett, 116 Wis. 450, 93 N.W. 473 (1903).

2. "The expulsion of one from a club, social organization or the like, implies that he cannot get along with his fellows, or even worse that he is unfit to be associated with. Once the news of his expulsion is bruited about, the consequences in his personal and in his business life can be very harmful." de Funiak, *Equitable Protection of Personal or Individual Rights*, 36 KY. L. J. 7, 26 (1947). See Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993, 998 (1930). It has been suggested that wrongful expulsion should be treated as a tort akin to defamation of character. Note, 7 CORN. L. Q. 261, 265 (1922).

3. Where the association performs a public function or possesses statutory powers by virtue of its incorporation, the courts sometimes grant relief through the writ of mandamus. *E.g.*, State ex rel. Nelson v. Lincoln Medical College, 81 Neb. 533, 116 N.W. 294 (1908); Barry v. The Players, 147 App.Div. 704, 132 N.Y.Supp. 59 (1st Dep't

often the touchstone of an association's success.⁴ Since its officers are obviously best equipped to adjudicate controversies arising in their own bailiwick, they should be granted a wide discretion by the courts.

In seeking to refrain from undue interference, courts of equity have naturally restricted their jurisdiction in these cases by the application of equitable criteria.⁵ Some of these, such as the axioms that equity will act only when the remedy at law is inadequate and when a substantial interest is impaired, seem relatively appropriate. Many courts, however, have also invoked the traditional equity doctrine that jurisdiction may be assumed only for the protection of "property rights."⁶ This test has been abandoned

1911), *aff'd*, 204 N.Y. 669, 97 N.E. 1102 (1912) (incorporated club). In the absence of these factors, the courts generally deny mandatory relief. *People ex rel. Schults v. Love*, 199 App.Div. 815, 192 N.Y.Supp. 354 (1st Dep't 1922) (trade union); *Jinkins v. Carraway*, 187 N.C. 405, 121 S.E. 657 (1924) (lodge). *Contra*: *Smetherham v. Laundry Workers' Union*, 44 Cal.App.2d 131, 111 P.2d 948 (1941). And a negative injunction rather than mandatory relief is the appropriate weapon where expulsion is merely threatened, and not accomplished. *See Medical Society of Mobile County v. Walker*, 245 Ala. 135, 139, 16 So.2d 321, 325 (1944). Thus the unavailability of mandamus does not preclude an action for such equitable relief. *See Pirics v. First Russian Slavonic Greek Catholic Benevolent Society*, 83 N.J. Eq. 29, 34, 89 Atl. 1036, 1038 (1914); *People ex rel. Schults v. Love*, *supra*, at 818, 192 N.Y.Supp., at 356.

Other criteria for granting relief may, however, be similar for the two remedies. "At all events, the judicial attitude toward an expulsion does not appear to be affected by any difference between mandamus and an injunction. The same tests of the wrongfulness of the expulsion and the same discretionary reasons against relief apply to both remedies." Chafee, *supra* note 2, at 1014.

4. "The interest that holds community service organizations together is . . . the unselfish spirit of those willing to sacrifice their time and energy to a public cause. That interest would not be protected but destroyed by strict judicial [intervention] in such agencies on complaint of their members. The court would find itself a constant intermeddler in community affairs serving no purpose other than to disrupt the morale and good will of voluntary organizations." *United States ex rel. Noel v. Carmody*, 148 F.2d 684, 686 (D.C.Cir. 1945). *See McClintock, EQUITY* § 161 (2d ed. 1948).

5. For a summary of the various limitations on equity jurisdiction, see 1 LAWRENCE, *EQUITY JURISPRUDENCE* §§ 41-50 (1929).

6. *E.g.*, *Rogers v. Tangier Temple*, 112 Neb. 166, 198 N.W. 873 (1924) (injunction denied because expelled member had no "property right"); *Kenneck v. Pennock*, 305 Pa. 288, 157 Atl. 613 (1931) (same); *Baird v. Wells*, 44 Ch.D. 661 (1890) (same). The doctrine is said to have originated from a dictum in a decision which in fact protected a personal right. *See Gee v. Pritchard*, 2 Swanst. 428, 452 (1818) (enjoining malicious publication of letters). Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 HARV. L. REV. 640, 643-4 (1916). The doctrine has come under heavy fire from text-writers and commentators. *See, e.g.*, POMEROY, *EQUITY JURISPRUDENCE* § 1338 (5th ed. 1941); WALSH, *EQUITY* § 52 (1930); Long, *Equitable Jurisdiction to Protect Personal Rights*, 33 YALE L. J. 115 (1923); Chafee, *The Progress of the Law, 1919-1920*, 34 HARV. L. REV. 388, 407-15 (1921); Notes, 20 NOTRE DAME LAW. 56 (1944); 20 ROCKY MT. L. REV. 304 (1948). And see Moscovitz, *Civil Liberties and Injunctive Protection*, 39 ILL. L. REV. 144, 158 (1944): "As a description of judicial action, it has never been more than a half truth. As a principle of justice, it is not even a half truth."

in other areas where injunctions are sought,⁷ and its application seems to be particularly inapposite in voluntary association cases. Since the real subject of protection is the complainant's status as a member, the existence of a "property right" is entirely irrelevant to the desirability of judicial intervention in a particular case.⁸

Although this doctrine is frequently cited, few courts have allowed it seriously to affect their determination as to the appropriateness of equitable remedies. Sometimes, purporting to apply contract principles, they assume jurisdiction without any mention of "property rights."⁹ Other courts have

7. *Henley v. Rockett*, 243 Ala. 172, 8 So.2d 852 (1942) (alienation of affections enjoined, the action at law having been abolished by statute); *Orloff v. Los Angeles Turf Club*, 30 Cal.2d 110, 180 P.2d 321 (1947) (ejection from a race track enjoined); see Note, 15 U. OF CAL. L. REV. 227 (1947); *Kenyon v. City of Chicopee*, 320 Mass. 528, 70 N.E.2d 241 (1946) (granting jurisdiction to enjoin enforcement of an ordinance prohibiting the distribution of handbills); *Flake v. Greensboro News Co.*, 212 N.C. 780, 195 S.E. 55 (1938) (enjoining publication of picture in a newspaper advertisement); *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579 (1930) (enjoining revocation of driver's license under an invalid ordinance). In the *Kenyon* Case, at 533-4, 70 N.E. 2d, at 244, the court said: "[I]f equity would safeguard their right to sell bananas it ought to be at least equally solicitous of their personal liberties guaranteed by the Constitution."

In *Hawks v. Yancey*, 265 S.W. 233, 237 (Tex. Civ. App. 1924) (enjoining molestation of a woman by her thwarted lover), the court asserted: "... the courts of this state are not required to search for rights of property on which to base jurisdiction to grant injunctions. . ." But the Texas courts reverted to the doctrine in subsequent cases. See, e.g., *Ex parte Castro*, 115 Tex. 77, 81, 273 S.W. 795, 797 (1925) (voiding injunction prohibiting husband's remarriage within a year in violation of a statute); *Brazell v. Gault*, 160 S.W.2d 540, 542 (Tex. Civ. App. 1942) (refusing to enjoin Texas ranger from carrying out his threat to arrest plaintiff). Similarly, scattered dicta in other jurisdictions have explicitly protected "personal rights" in equity, but without precluding later courts in the same jurisdiction from reviving the dogma on occasion.

8. "[E]xpulsion from social or fraternal or trade organizations may go far toward wrecking the complainant's prospects in life. Can there be any doubt in such cases that his very slender interest in the assets of the organization, in which he would probably never realize anything in some future indefinite winding-up of its affairs, is a mere excuse, satisfying the supposed rule that a property interest must be involved, protection of the personal rights of the member being the real purpose of the courts?" WALSH, EQUITY, 275-6 n.37 (1930). See also Pound, *supra* note 6, at 677-81; Comment, 37 YALE L. J. 368 (1928); Note, 7 CORN. L. Q. 261 (1922).

9. See, e.g., *Davis v. International Alliance*, 60 Cal. App.2d 713, 716, 141 P.2d 486, 488 (1943); *Yockel v. German-American Bund*, 20 N.Y.S.2d 774, 776 (1940). But the courts do not, in fact, apply strict contract principles, nor would this be desirable. They often look beyond the by-laws which comprise the supposed contract. There is seldom any attempt to look into the merits of the controversy, as would be required under a contract theory. Dean Pound has criticized the application of contract principles on the ground that the courts would be called upon to grant relief for minor infractions of the by-laws, thus overloading court dockets. Pound, *supra* note 6, at 680-1.

Although many of the courts which speak in terms of contract seem to have abandoned the property requirement, perhaps on the theory that any contract involves a "property right," there is no necessary doctrinal reason for so doing. If the courts are to insist on a "property right" in plaintiff before granting equitable jurisdiction, the

declared that membership in any voluntary association is in itself a "property right," thereby rendering the doctrine meaningless as a criterion of jurisdiction.¹⁰ At other times, the "property right" relied upon is of so nominal a nature¹¹ or is so clearly capable of protection in an action at law¹² as to indicate that the court is merely paying lip service to the principle.

But in the recent case of *Berrien v. Pollitzer*,¹³ the "property right" criterion as applied to expulsion from voluntary associations was, for the first time, explicitly repudiated. The suit involved a dispute within the National Woman's Party, a non-stock, non-profit corporation organized for the purpose of securing equality for women. Certain of the defendants, purporting to act as the National Council of the Party, adopted a resolution temporarily excluding from the Party headquarters all members of an "insurgent" group. One of the "insurgents," who had received no notice of the proposed resolution or of the meeting at which it was adopted, sued to enjoin this action. The federal district court, however, refused to assume jurisdiction on the ground that a court of equity "can interfere only to protect property rights."¹⁴

On appeal, counsel for plaintiff assumed the necessity of a "property right" and based his argument on its presence.¹⁵ But the court of appeals, while it reversed and remanded the case for a trial on the merits, refused

existence of a "contract" need not obviate the requirement. Thus some courts, viewing the relationship as contractual, have also looked for a "property right" before granting jurisdiction. *E.g.*, *Lawson v. Hewell*, 118 Cal. 613, 50 Pac. 763 (1897); *Medical Society of Mobile County v. Walker*, 245 Ala. 135, 16 So.2d 321 (1944).

10. See *Hardt v. McLaughlin*, 25 F.Supp. 684, 685 (E.D.Pa.1936) ("[M]embership in any club involves certain basic payments . . . which, at the least, gives rights of ownership in the club property . . ."); *Jones v. Rhea*, 130 Va. 345, 358, 107 S.E. 814, 818 (1921) ("Membership in a social club entitles the member to certain social opportunities and enjoyments, and affords him an interest, though not a transmissible interest, in the club property"). But cf. *Lamm v. Stoen*, 226 Iowa 622, 284 N.W. 465 (1939). The more general view of courts denying jurisdiction is that the "property right" must be severable. Since a member's interest in an unincorporated association cannot be transferred and is not subject to execution, it does not meet this requirement. *State ex rel. Hyde v. Jackson County Medical Society*, 295 Mo. 144, 243 S.W. 341 (1922); *Franklin v. Burnham*, 82 N.Y. Supp. 882 (Sup.Ct.1903) (Masonic fraternity); *Rogers v. Tangier Temple*, 112 Neb. 166, 198 N.W. 873 (1924) (fraternal society).

11. *E.g.*, *Holcombe v. Leavitt*, 124 N.Y.Supp. 980 (Sup.Ct.1910) (possibility of becoming a future trustee of the church—the expectancy of legal title evidently constituting the property right). The English courts require only that the club own some property. Compare *Baird v. Wells*, 44 Ch. D. 661 (1890) (no property; injunction denied), with *D'Arcy v. Adamson*, 29 T.L.R. 367 (1913) (property owned; injunction granted).

12. *Froelich v. Musicians' Mutual Benefit Ass'n*, 93 Mo.App. 383 (1902) (funeral benefits); *Rueb v. Rehder*, 24 N.M. 534, 174 Pac. 992 (1918) (insurance policies); *Heasley v. Operative Plasterers' and Cement Finishers' International Ass'n*, 324 Pa. 257, 188 Atl. 206 (1936) (death and disability benefits).

13. 165 F.2d 21 (D.C.Cir.1947).

14. Civil Action No. 530-47, U.S.D.D.C.(1947).

15. Brief for Appellant, pp. 12-8, *Berrien v. Pollitzer*, 165 F.2d 21 (D.C.Cir.1947).

so to ground its decision. All three judges held that "personal rights" of the plaintiff had been infringed, and that jurisdiction was warranted regardless of whether she had an interest in the assets of the association. Declaring that equity should protect "personal rights" by injunction just as readily as it protects "property rights,"¹⁶ the court based its decision on the inadequacy of the legal remedy. Since invasions of "personal" interests are "less capable of translation into money terms than invasions of property interests," the need for equitable relief was deemed even greater in the former class of cases.¹⁷

Abandonment of the "property right" requirement would leave other criteria apparently adequate for determining equitable jurisdiction. The first of these, absence of an adequate remedy at law, is easily met by an aggrieved member. As was pointed out in the *Pollitzer* case, rarely can he obtain real redress in an action at law. While only a few courts have refused to allow a suit for damages,¹⁸ it is difficult for a jury to measure the amount to be awarded.¹⁹ And the paucity of suits for damages, even in jurisdictions insisting that a substantial "property right" be prerequisite to an injunction, indicates that expelled members are generally more interested in regaining their status than their property interest.

A further requirement for jurisdiction, peculiar to this class of equity cases, is exhaustion of the plaintiff's remedies within the association.²⁰ This

16. Cited for this proposition was *Kenyon v. City of Chicopee*, 320 Mass. 523, 534, 70 N.E.2d 241, 244 (1946), where the court stated: "We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction." And see cases cited in note 7 *supra*.

17. This statement appears to go beyond the requirements of the holding. If followed, it would reverse the previous requirements for equitable jurisdiction, in that a member alleging an injury of a primarily personal nature would be in a better position than one whose loss was chiefly monetary.

18. *Peyre v. Society of French Zouaves*, 90 Cal. 240, 27 Pac. 191 (1891); *Lavalle v. Société St. Jean Baptiste*, 17 R.I. 680, 24 Atl. 467 (1892); *Kelly v. National Society of Printers' Ass'ts*, 84 L.J.K.B. 2236 (1915). But most of the cases are *contra*. Punitive damages and damages for mental suffering have sometimes been awarded. *St. Louis S.W. Ry. Co. v. Thompson*, 102 Tex. 89, 113 S.W. 144 (1908). But cf. *Boutwell v. Marr*, 71 Vt. 1, 42 Atl. 607 (1899). See *Expulsion of Member of Club*, 70 Sol. J. 823 (1926). But apparently the requirements for a damage suit are more stringent than for equitable relief. Thus in one recent case, an injunction was granted, but damages were denied. The court said that damages will be awarded only where there is "proof of fraud or bad faith on the part of the membership as a whole, as distinguished from the officers ordering the expulsion . . ." *Coleman v. O'Leary*, 58 N.Y.S.2d 812, 817 (Sup.Ct.1945); accord: *Browne v. Hibbets*, 290 N.Y. 459, 467, 49 N.E.2d 713, 717 (1943). It has been argued that the absence of a "legal right" should not preclude equitable relief. See Chafee, *Does Equity Follow the Law of Torts?* 75 UOFPA.L.REV. 1, 25-6 (1926).

19. See *Lavalle v. Société St. Jean Baptiste*, 17 R.I. 680, 687, 24 Atl. 467, 469 (1892).

20. E.g., *Fish v. Huddell*, 51 F.2d 319 (D.C.Cir.1931); *Simpson v. Salvation Army*, 49 Cal.App.2d 371, 121 P.2d 847 (1942). As to labor union cases, see Note, 168 A.L.R. 1462, 1463 (1947). The rule is generally applied even where the plaintiff has a "property right." *Dragwa v. Federal Labor Union*, 136 N.J.Eq. 172, 41 A.2d 32 (1945). But cf.

rule, however, has been riddled with exceptions. Where the constitution and by-laws are so patently unjust as to deny the possibility of a fair trial, courts often take the position that further proceedings within the association would be a fruitless formality.²¹ And sometimes the requirement has been obviated where the plaintiff was expelled "without jurisdiction" or in an irregular proceeding.²²

More difficult for an aggrieved member to satisfy is the requirement that the injury be of a substantial character before courts will take cognizance of it at all. The relative importance of membership to a particular individual, as measured by such facts as officership and length of membership, would seem to have an important bearing on this issue. In practice, however, courts seem to have considered only the type of organization, determining the substantiality of the injury primarily on the basis of this factor.

In applying this criterion, it is inevitable that courts weigh the extent of the member's injury against the disadvantages of intervening in the particular type of association.²³ Expulsion from a church is usually deemed of sufficient consequence to warrant judicial intervention,²⁴ despite the reluc-

Smith v. International Printing Pressmen & Assistants' Union, 190 S.W.2d 769 (Tex. Civ.App.1945), *rev'd on other grounds*, 145 Tex. 399, 198 S.W.2d 729 (1946). In suits for damages, on the other hand, some courts have allowed appeal to the courts in the first instance. Sons and Daughters v. Wilkes, 98 Miss. 179, 53 So. 493 (1910). *Contra*: McGuinness v. Foresters of America, 78 Conn. 43, 60 Atl. 1023 (1905).

21. *E.g.*, Willis v. Davis, 233 S.W. 1035 (Tex.Civ.App.1921) (no possibility of fair hearing because those who brought the charges were to judge plaintiff's case). And *see* Robinson v. Nick, 235 Mo.App. 461, 483, 136 S.W.2d 374, 387 (1940): "[W]here fraud, oppression, or bad faith is shown; or where it appears that an appeal within the organization would have been a vain and useless step, then the failure of the member to have availed himself of the remedies within the organization will not be a bar to his right to ask judicial interference"; Blek v. Wilson, 145 Misc. 373, 376, 259 N. Y. Supp. 443, 446 (Sup. Ct. 1932): "[I]f the constitution of the organization itself is so unfair, unreasonable and arbitrary as to deprive him of a fair trial, he may then appeal to this court . . ."

22. Medical Society of Mobile County v. Walker, 245 Ala. 135, 16 So.2d 321 (1944) (procedure "irregular and without jurisdiction"); Ellis v. AFL, 48 Cal.App.2d 440, 120 P.2d 79 (1941) (member "denied the due process of notice and a hearing"); Gardner v. East Rock Lodge, 96 Conn. 198, 113 Atl. 308 (1921) (beyond jurisdiction of lodge); Chew v. Manhattan Laundries, 134 N.J.Eq. 566, 36 A.2d 205 (1944) (members denied opportunity to learn of right of appeal within organization). The consequence of some of these cases is, in effect, to eliminate the rule requiring exhaustion of remedies. The tests for immediate resort to the courts do not seem to vary appreciably from those applied to determine the wrongfulness of the expulsion. See note 1 *supra*.

23. Professor Chafee has categorized the various policies which may determine judicial interference with the different types of associations under four headings: (1) The Strangle-hold Policy (courts should be more prone to interfere where injury is of a serious nature), (2) The Dismal Swamp Policy (should be reluctant to assume the risk of interpreting the occult rules of churches and lodges), (3) The Hot Potato Policy (should consider the amount of resentment that will be aroused), (4) The Living Tree Policy (should weigh the value of the association's autonomy). See Chafee, *supra* note 2, at 1020-9.

24. Taylor v. Jackson, 273 Fed. 345 (D.C.Cir.1921); *cf.* Mathis v. Holmes, 134

tance of courts to become arbiters of theological matters.²⁵ Expulsion from a labor union or business organization generally carries with it such obvious economic injury that the cases granting jurisdiction are legion.²⁶ But courts have been less generous in granting jurisdiction where the association is a professional society,²⁷ even though the nature and extent of the injury caused by expulsion here seem equally great. They have been even more reluctant to reinstate expelled students to schools and colleges,²⁸ apparently feeling

N.J.Eq. 186, 34 A.2d 645 (1943) (enjoining the closing of a church by the trustees); *Mattson v. Saastamoinen*, 168 Minn. 178, 209 N.W. 648 (1926) (assuming jurisdiction in suit to enjoin change of religious doctrines). *Contra*: *United States ex rel. Johnson v. First Colored Baptist Church*, 13 F.2d 296 (D.C.Cir.1926); *Deloisted v. Hilson*, 120 Neb. 788, 235 N.W. 340 (1931); *but cf. Gibson v. Singleton*, 149 Ga. 502, 101 S.E. 178 (1919) (refusing to enjoin election even though it would "result in an illegal and fraudulent election, and be violative of the rules of the church, and permit the pastor to enforce his own arbitrary will upon the church for his own private and personal purposes."). See Notes, 71 UOFPA.L.REV. 161 (1923); 13 VA.L.REV. 400 (1927).

25. The language of the court in *Holcombe v. Leavitt*, 124 N.Y.Supp. 980, 981 (Sup. Ct. 1910), is typical: "The court recognizes that all questions of faith, doctrine, and discipline belong exclusively to the church and its spiritual officers, and that the question of church membership is purely ecclesiastical." Whereupon the court proceeded to enjoin the expulsion of the complaining members. In *Bonacum v. Harrington*, 65 Neb. 831, 834, 91 N.W. 886, 887 (1902), the court, per Pound, C., said: "The laws and decrees of the church in evidence presuppose a considerable knowledge of the canon law, and their interpretation by a court, which has no knowledge and cannot take judicial notice of that system, must necessarily be very unsatisfactory . . ."

26. Loss of employment is almost always considered sufficiently severe to warrant equitable intervention. *E.g.*, *Brotherhood of Painters, Decorators and Paperhangers v. Boyd*, 245 Ala. 227, 16 So.2d 705 (1944); see cases cited in Note, 163 A.L.R. 1462, 1479-82 (1947). Other incidents of union membership which the courts have considered in granting jurisdiction include: benefits of collective bargaining, *Obergfell v. Green*, 29 F.Supp. 589 (D.D.C. 1939), *rev'd on other grounds*, 121 F.2d 46 (D.C.Cir. 1941); seniority rights, *Louisville & N. R. Co. v. Miller*, 219 Ind. 389, 38 N.E.2d 239 (1941). But the court must weigh the substantiality of these injuries against the possible harm resulting from judicial intervention. See AMERICAN CIVIL LIBERTIES UNION, DEMOCRACY IN TRADE UNIONS 35-40 (1939); Thatcher, *Shall We Have More Regulation of the Internal Affairs of Labor Unions?* 7 LAW. GUILD REV. 14 (1947); Comment, 45 YALE L.J. 1248 (1936).

27. *State ex rel. Hyde v. Jackson County Medical Society*, 295 Mo. 144, 243 S.W. 341 (1922) (denying mandamus to reinstate); *Weyrens v. Scotts Bluff County Medical Society*, 133 Neb. 814, 277 N.W. 378 (1938), 17 NEB. L. BULL. 229 (1939) (refusing to enjoin expulsion); *cf. Howard v. Betts*, 190 Ga. 530, 9 S.E.2d 742 (1940) (refusing to enjoin withdrawal of local charter of dental society). *But cf. Medical Society of Mobile County v. Walker*, 245 Ala. 135, 140, 16 So.2d 321, 325 (1944).

28. *Anthony v. Syracuse Univ.*, 224 App.Div. 487, 231 N.Y.Supp. 435 (4th Dep't 1928) (refusing to enjoin expulsion without cause); *Barker v. Bryn Mawr College*, 278 Pa. 121, 122 Atl. 220 (1923) (denying mandamus to reinstate student dismissed without a hearing). Most private educational institutions reserve the right to dismiss students without cause, and the courts have generally been unwilling to impose procedural standards. Since public schools are governed largely by statute, mandamus has issued in a great number of instances. *E.g.*, *School Board v. Thompson*, 24 Okla. 1, 103 Pac. 578 (1909)

that educational institutions must be granted a broad discretion in matters of discipline if they are to operate effectively. In lodge cases the financial loss is so minimal and the extent of the personal injury so difficult to determine that courts have tended to maintain a hands-off attitude.²⁹

Where internal remedies are inadequate or have been exhausted, it seems sensible to determine equitable jurisdiction by thus balancing the substantiality of each injury against the disadvantages of intervening in the voluntary association involved. Certainly, the "property right" test, frequently evaded in the past and repudiated in *Berrien v. Pollitzer*, has no place in a field where personal relationships are paramount.

(granting mandamus to reinstate expelled student to public school). See Pennypacker, *Mandamus to Restore Academic Privileges*, 12 VA. L. REV. 645 (1926).

29. Mead v. Stirling, 62 Conn. 586 (Ct. C.P. 1892); Plemenik v. Prickett, 97 N.J.Eq. 340, 127 Atl. 342 (1925); cf. Micklish v. Grand Lodge, 162 Ark. 71, 257 S.W. 353 (1924). But cf. Denison v. Brotherhood of American Yeomen, 191 Iowa 698, 182 N.W. 873 (1921). The difficulty of understanding the ritual of the lodge has sometimes been a deterrent to the assumption of jurisdiction. E.g., Wellenvoss v. Grand Lodge, 103 Ky. 415, 45 S.W. 360 (1898).